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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances
(25-29 October 1999)

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Introduction

1. Since the establishment of the Working Group in 1980, 12,258 cases of disappearance alleged to have occurred in Sri Lanka have been reported to the Working Group. The cases occurred in the context of two major sources of conflict in that country: the confrontation of Tamil separatist militants and government forces in the north and north-east of the country, and the confrontation between the People's Liberation Front (JVP) and the government forces in the south. The cases reported to have occurred between 1987 and 1990 (145 cases in 1987, 182 cases in 1988, 5,027 cases in 1989 and 4,777 in 1990) took place mostly in the Southern and Central Provinces of the country, during a period in which both security forces and the JVP resorted to the use of extreme violence in the contest for State power. In July 1989, the conflict in the south took a particularly violent turn when JVP adopted even more radical tactics, including enforced work stoppages, intimidation and assassination, as well as targeting family members of the police and army. To thwart the JVP military offensive, the State launched a generalized counter-insurgency campaign and the armed forces and the police appear to have been given wide latitude to eliminate the rebel movement and restore law and order in any way they saw fit. By the end of 1989, the armed forces had put down the revolt.

2. The cases reported to have occurred since 11 June 1990, the date of resumption of hostilities with the Liberation Tigers of Tamil Eelam (LTTE), have taken place primarily in the Eastern and North-Eastern Provinces of the country. In the north-east, the persons most often reported detained and missing were young Tamil men accused or suspected of belonging to, collaborating with, aiding or sympathizing with LTTE. The most frequently utilized method of detention in the north-east was the cordon-and-search operation in which the army, often in conjunction with the police, and particularly the Special Task Force, went into a village or a rural area and detained scores of persons. Many were released within 24 to 48 hours, but a percentage of the persons remained in custody for questioning. In the Jaffna Peninsula the highest number of disappearances (622) occurred in 1996 when the security forces regained control of the Peninsula from LTTE. Since then the number of disappearances being reported from Jaffna has continuously declined.

3. The Working Group visited Sri Lanka in 1991 and 1992. Following those visits, the Working Group formulated a number of recommendations to the Government of Sri Lanka concerning past cases of disappearances and measures to prevent disappearances from occurring in the future. At the time of its first visit in 1991, the Working Group had transmitted 4,932 cases of enforced or involuntary disappearances to the Government of Sri Lanka.

4. The first visit to Sri Lanka took place from 7 to 17 October 1991 and was carried out by three members of the Working Group, Mr. Agha Hilaly, Mr. Jonas Foli and Mr. Toine van Dongen. Their report (E/CN.4/1992/18/Add.1) was presented to the Commission on Human Rights at its forty-eighth session. The same members of the Working Group undertook a second visit from 5 to 15 October 1992 for the purpose, inter alia, of evaluating the progress of the implementation of its recommendations formulated in 1991. Their report was submitted to the Commission at its fiftieth session (E/CN.4/1993/25/Add.1).

5. The purpose of its third visit was twofold: to follow up on the recommendations made by the Working Group during its visits in 1991 and 1992 and to identify efforts taken to minimize and resolve the problem of enforced or involuntary disappearances, as well as to follow up on the latest developments. The Working Group was represented by one of its members, Mr. Manfred Nowak, and by its Acting Secretary. The visit took place from 25 to 29 October 1999. The members of the mission were received by the Minister of Foreign Affairs, the Secretary of the Ministry of Foreign Affairs, the Secretary of Defence, the Minister of Justice, Constitutional Affairs, Ethnic Affairs and National Integration, the Honourable Chief Justice of the Supreme Court, the Attorney-General, the Commanders of the Army and the Air Force, a representative of the Commander of the Navy and the Inspector-General of Police. They also met other senior government officials, the Chairperson and other members of the Human Rights Commission, the Chairpersons of the present and of one of the former Presidential Commissions of Inquiry into Involuntary Removal or Disappearance of Persons and the Chairperson of the Rehabilitation of Persons, Properties and Industries Authorities (REPPIA). In addition, they met with the United Nations Special Rapporteur on violence against women and various other representatives of intergovernmental and non-governmental organizations as well as representatives of families of disappeared persons.

6. The Working Group gratefully acknowledges that it has continued to receive valuable cooperation from the Government of Sri Lanka, both in the preparation of and during the visit. No obstacles were encountered by the members of the mission in receiving representatives of non-governmental organizations, witnesses and relatives of missing persons. The Working Group also wishes to express its gratitude to the United Nations Resident Coordinator, Mr. Peter Witman, for his assistance.

I. DEVELOPMENTS SINCE 1994

7. In August 1994, a coalition of parties headed by the Sri Lanka Freedom Party, the People's Alliance and the Sri Lanka Muslim Congress Party won the parliamentary elections and formed a government. In November 1994, Ms. Chandrika Bandaranaike Kumaratunga, leader of the People's Alliance, won the presidential elections and set up three Presidential Commissions of Inquiry into Involuntary Removal or Disappearance of Persons that had occurred in the country since 1 January 1988. The Commissions started their work in January 1995. Each Commission was assigned a specific geographical area of the country and was composed of three members. All three Commissions submitted comprehensive reports in September 1997 without, however, having finished their work. The investigation of some 10,000 remaining complaints relating to these "old" cases was, therefore, entrusted to a fourth Presidential Commission of Inquiry which is still operating. On the basis of these inquiries into disappearances under the former Government, almost 4,000 suspected individual perpetrators were identified, almost 500 persons were indicted and some of them convicted.

8. In addition, the Government in 1995 enacted the Registration of Deaths (Temporary Provisions) Act No. 2 in order to simplify and expedite the process of issuing death certificates in respect of persons who are presumed dead. By virtue of the Registration of Deaths (Temporary Provisions) Act No. 58 of 1998 the procedure was further simplified in order to find a speedy solution to these "old" cases of disappearance by means of a legal presumption of death and the payment of compensation to the families. In May 1999 a special "Unit for the

Clarification of Cases of Alleged Forced or Involuntary Disappearances", which has been set up by the Cabinet of Ministers as part of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), started to operate a special computer programme relating to all cases of disappearances submitted by the Working Group to the Government of Sri Lanka. This Unit is in the process of clarifying cases of disappearances by various means, including the payment of compensation to the families of disappeared persons. On the basis of this new (temporary) legislation some 15,000 death certificates were issued since 1995, and more than 12,000 families received compensation. Of these cases, some 2,700 allegedly relate to cases submitted by the Working Group to the Government of Sri Lanka.

9. In the meantime, however, high levels of enforced or involuntary disappearances continued to be reported. After LTTE unilaterally ended the peace talks in April 1995, several cases were reported in Colombo, the capital, and in the east of the country. The number increased dramatically when the armed forces regained control over the northern Jaffna Peninsula from the LTTE. While in 1995 there allegedly occurred 78 cases of enforced disappearance, in 1996, there were 623 cases. During 1997, 92 cases were reported, the highest number of disappearances reported from any country in that year. In recent years the number of reported cases decreased to 4 (1998) and 2 (1999).

10. With respect to the disappearances which occurred during the present Government, no Presidential Commission of Inquiry similar to the four cited above was established. However, on the basis of a presidential directive of October 1996, the Secretary of Defence appointed a special Board of Investigation into Disappearances in Jaffna Peninsula consisting of high officials of the three armed forces and the police. This Board investigated a total of 2,621 complaints, traced more than 200 disappeared persons and identified an unspecified number of suspected perpetrators. Until now, none of these persons has been indicted. The investigations of the Board were finalized in March 1998 without, however, publishing the report.

11. In August 1996, Parliament enacted the Human Rights Commission of Sri Lanka Act No. 21 of 1996. The Commission, which consists of five members, started to operate in June 1997 and is entrusted with a broad range of human rights tasks, including the investigation of complaints regarding disappearances and visits to police stations and detention centres. Under section 28 of the Human Rights Commission Act, the Commission must be informed within 48 hours of any arrest or detention under the Prevention of Terrorism Act or the Emergency Regulations.

12. Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in January 1994. The Torture Act passed by Parliament in November 1994 made torture punishable by imprisonment for a term of not less than 7 years and not exceeding 10 years. On 3 October 1997, Sri Lanka acceded to the Optional Protocol to the International Covenant on Civil and Political Rights limiting the scope of investigations of complaints relating to infringement of human rights to the period after 3 January 1997.

13. During the same period, LTTE has continued fighting for a separate homeland for minority Tamils in the north and east of the country. The armed conflict continues, claiming hundreds of lives.

II ASSESSMENT OF THE IMPLEMENTATION OF THE WORKING GROUP'S PREVIOUS RECOMMENDATIONS

14 In its previous reports, the Working Group issued a series of recommendations In the following paragraphs, the Working Group will assess the measures taken by the Government of Sri Lanka aimed at implementing these earlier recommendations

A Establishment of a mechanism to clarify the fate and whereabouts of the missing persons (E/CN 4/1992/18/Add 1, para 204 (k) and E/CN 4/1993/25/Add 1, para 133)

15 The three regional Presidential Commissions of Inquiry into Involuntary Removal or Disappearance of Persons set up in November 1994 submitted their reports to the President of the Republic on 3 September 1997 The Commissions investigated a total of 27,526 complaints and found evidence of disappearance in 16,742 cases A further 10,135 complaints submitted to the Commissions by relatives and witnesses remained to be investigated by the present (fourth) Presidential Commission of Inquiry They relate to 6,517 cases of disappearance and include complaints of disappearances alleged to have occurred in war zones like Wanni, Puliyankulam or the east of Ampakaman, which are of difficult access The Chairperson of the present Commission of Inquiry informed the Working Group that out of these 6,517 remaining cases of disappearance, the Commission only considers 4,052 cases to be "proven" Apart from only very few disappeared persons who were found alive, all of the more than 20,000 persons established by the four Commissions as disappeared are considered to be dead More than 15,000 death certificates have already been issued in accordance with temporary legislation (see below, para 52)

16 The final reports of the three earlier Commissions were published in September 1997 and were available from the Government Publications Bureau, albeit only in a very limited number The reports were not widely distributed, nor can they be found in local libraries The interim report of the present Commission was submitted to the President of the Republic on 30 December 1998 and has not yet been published The final report is expected to be issued soon

17 All four Commissions were authorized only to investigate cases of disappearances which occurred under the former Government Although the rate of disappearances increased again significantly during 1995 and 1996, no Presidential Commission of Inquiry was established in relation to these cases

18 On the basis of a directive issued by the President of the Republic in October 1996, the Secretary of the Ministry of Defence on 5 November 1996 appointed a Board of Investigation into Complaints of Disappearances in Jaffna Peninsula This Board of Investigation was chaired by Mr Bandula Kulatunga, a retired senior officer of the Sri Lanka Administrative Service, and was composed of four high-ranking officers of the Army, Navy, Air Force and the Police It visited Jaffna Peninsula several times and investigated a total of 2,621 complaints and established 765 cases of disappearance On examining reports from police stations and detention centres and after visits to these places of detention, the Board was able to trace 201 persons It also established that 16 persons were dead, 14 of whom at the hands of the Security Forces

19 The Board of Investigation submitted its final report to the Ministry of Defence on 9 March 1998. This report, which contains a number of annexes including evidence which justifies further inquiries by the police with a view to pursuing legal action against offenders, was not made available to the public.

20 The Human Rights Commission of Sri Lanka was established by Parliamentary Act No. 21 of 21 August 1996. On 17 March 1997, the President of the Republic appointed its Chairman, former Supreme Court Judge O. S. M. Seneviratne, and four members - Dr. A.T. Ariyaratne, Professor Arjuna Aluvihare, Mr. T. Suntheralingam and Mr. Ahamad Javid Yusuf. This newly established national human rights institution started to operate in June 1997 and replaced the former Human Rights Task Force which was abolished on 30 June 1997. The Commission established 10 regional offices, including one in Jaffna, and presently employs some 90 officers of whom some 40 work in the Colombo headquarters. It has been authorized, inter alia, to inquire into, investigate and settle human rights complaints, to advise the Government in formulating relevant legislation, to make recommendations to the Government on human rights issues, to promote awareness of human rights and to take legal steps through courts. Under section 28 of the Human Rights Commission Act of 1996, the Commission must be informed of any arrest or detention carried out under the Prevention of Terrorism Act or the Emergency Regulations immediately and in any case not later than 48 hours from the time of arrest or detention.

21 On 11 August 1998, the Commission submitted its first Annual Report, which covers the period from 17 March 1997 to 30 March 1998, to Parliament. The report has, however, not yet been made available to the general public. According to this report, the Commission has received a total of 4,350 complaints, has visited 1,240 police stations and 291 detention camps where it was in contact with a total of 3,444 detainees most of whom (3,325) were of Tamil ethnic origin. It investigated 842 cases of missing persons and traced 219 of them. In Vavuniya, out of 142 cases, 104 persons have been traced. In Jaffna, 16 persons were traced out a total of 325 cases. In Batticaloa 62 persons were traced out of a total of 204 cases and in Colombo, out of 76 cases, 16 persons were traced. The Human Rights Commission could, however, not indicate whether any of the disappeared persons reported to the Government of Sri Lanka by the United Nations Working Group were among those traced by it.

22 During the period between August 1998 and September 1999, the Human Rights Commission received 1,852 complaints against members of the armed forces and the police. A total of 1,122 persons were reported missing during this period of whom the Human Rights Commission could actually trace 648, i.e. more than half. In Vavuniya, 251 out of 497 missing persons were traced, in Batticaloa, 274 out of 285. Again, the Working Group was not able to check whether any of the disappeared persons on its list were traced by the Human Rights Commission.

23 Members of the Human Rights Commission pointed out that the concept of "missing persons" they were using included also cases of persons who had disappeared on their own owing to various reasons, such as running away from home for personal reasons or any kind of fear entertained by them, the category of missing persons therefore included others than those mentioned in complaints made against the armed forces or the police.

24. Members of the Human Rights Commission also informed the Working Group that a total of 932 visits to police stations and 380 visits to detention camps had been carried out from January 1999 to September 1999, 2,315 detainees were visited, including 520 in Vavuniya, 476 in Jaffna, 462 in Anuradhapura and 202 in Batticaloa, of whom 2,179 were of Tamil ethnic origin.

25. During the period between 1 January and 30 July 1999, a total of 1,278 arrests were reported to the Human Rights Commission. Most of them occurred in Vavuniya (792), Jaffna (125), Tricomalee (116) and Kalmunai (94).

26. Members of the Human Rights Commission also reported to the Working Group that its Jaffna Regional Office is conducting relevant investigations on 277 cases of enforced or involuntary disappearances transmitted by the Working Group to the Government of Sri Lanka. According to the information provided, 16 persons had been traced by that Regional Office.

B. Clarification and involvement of human rights organizations, identification of bodies and the work of forensic experts (E/CN.4/1992/18/Add.1, para. 204 (c) and E/CN.4/1993/25/Add.1, para. 146 (c))

27. The mission was informed that a special police team had initiated forensic investigations into some cases identified by the three regional Commissions of Inquiry as being prima facie cases of enforced disappearance.

28. In March 1999, the Ministry of Foreign Affairs invited interested non-governmental organizations, local and foreign, to send observers to the exhumations of alleged mass graves near Chemmani on the Jaffna Peninsula. These graves date from mid-1996, when the Government was consolidating its hold over the Peninsula after regaining control from LTTE. Knowledge of the existence of the alleged graves stemmed from disclosures by ex-Army Lance Corporal Somaratne Rajapakse, who was convicted in July 1998 of the 1996 rape and murder of a student, Krishanty Kumaraswamy, and the killing of her mother, brother, and a neighbour (see below, para. 31). On 16 and 17 June 1999, two forensic experts from the United States-based NGO Physicians for Human Rights and two observers from Amnesty International witnessed local forensic experts digging up two bodies from a shallow grave in the Chemmani area. Between 6 and 23 September 1999, further exhumations were carried out in the presence of international monitors at various grave sites previously indicated by Mr. Rajapakse and four co-prisoners. Although several hundred disappeared persons were alleged to be buried in this area, the mortal remains of only 13 other individuals were recovered by the Sri Lankan forensic experts. Nevertheless, this exhumation was considered a first step towards attributing full accountability for the disappearances which occurred in the Jaffna Peninsula during 1996.

C. Prosecution of those responsible for disappearances (E/CN.4/1992/18/Add.1, para. 204 (g))

29. Officers of the armed forces that commit offences against civilians can be tried either by military or civil courts. In case of a summary trial before a military court, the punishment is of a

disciplinary nature, such as reduction in rank, withholding of promotions or delay in promotions. In case of a court martial, the punishment can be imprisonment or discharge from service. If a prima facie case is established before a civil court, the officer has to be suspended from service.

30. Under Sri Lankan law, criminal proceedings before a civil court usually start with a non-summary procedure before a magistrate. If a prima facie case is established the accused will be tried before a jury at the High Court. The proceedings before the magistrate should not last longer than one month. According to information received from the Minister of Justice, however, these proceedings in practice often last for many months or even years. According to the Minister, this delay is the main bottleneck in bringing the perpetrators of enforced disappearances or other human rights abuses to justice.

31. One way to avoid such a delay is indictment for a trial at bar before three judges. This procedure was applied, for instance, in the well-known case of the student Krishanty Kumaraswamy, who on 7 July 1996 was raped and killed in Ariyalai on the Jaffna Peninsula by eight soldiers. All the accused soldiers were discharged from service pending trial, convicted by the High Court of Colombo and sentenced to death. During the trial, one of the accused, ex-Army Lance Corporal Somaratne Rajapakse, reported about the existence of mass graves in the Chemmani area which led to forensic investigations and exhumations during 1999 (see above).

32. A complete list of criminal cases against Army personnel before civil courts in connection with alleged human rights violations was provided to the Working Group by the Army Commander. The list includes the well-known case of the disappearance of 32 schoolboys in 1989 in Embiliptiya. Although the root cause of this case of disappearance was in fact a private dispute, it was allegedly related to Army operations against JVP. Three officers and four soldiers were condemned to 10 years' rigorous imprisonment by the High Court of Ratnapura. Two other officials were acquitted. The other cases reported to the Working Group by the Army Commander are not directly related to enforced disappearances. One case concerns the massacre of 35 villagers at Mylantenna on 9 August 1992 for which 21 soldiers have been arrested and brought before the High Court of Batticaloa. Eight soldiers accused of the massacre of 34 civilians in Kumarapuram village on 11 February 1996 have been discharged from the Army while the trial is pending before the High Court of Trincomalee.

33. Army authorities have also decided disciplinary sanctions in case of human rights violations, independently of the judicial course of action. Soldiers accused of sexual harassment of Tamil women, for instance, have been reduced in rank, detained for up to 90 days and discharged from the Army.

34. With respect to criminal action against perpetrators of enforced disappearances, the three Presidential Commissions of Inquiry mentioned above (paras. 7 and 15) played a crucial role. They established evidence concerning 16,742 cases of disappearance and identified, in their final reports of September 1997, suspected perpetrators in relation to 3,861 cases of disappearance which had occurred under the former Government. On the basis of this evidence the Inspector General of Police in December 1997 established a special Disappearance Investigation Unit. In relation to the 3,861 cases of disappearance, police investigations against 1,560 suspected perpetrators members of the police and the armed forces were initiated.

35 On 14 July 1998 the former Attorney-General (the present Chief Justice) established a Missing Persons Commissions Unit which as of 1 October 1999 had received from the police Disappearance Investigation Unit dossiers relating to 890 cases of disappearance According to information provided by the Attorney-General, criminal proceedings were initiated against 486 persons in relation to 270 cases of disappearance In 73 cases, non-summary procedures before magistrates were started, while in 197 cases indictments were issued Since the act of enforced disappearance is not a criminal offence under Sri Lankan criminal law, these indictments and non-summary proceedings relate to various offences, such as abduction with intention to murder, wrongful confinement, torture, rape or murder The mission was informed by the Attorney-General and the Inspector General of Police that on 14 September 1999 the first of the accused, a police officer, was convicted for the crime of abduction and sentenced to five years of imprisonment

36 With respect to the disappearances which occurred during the present Government, the Board of Investigation into Disappearances in Jaffna Peninsula in its report of 9 March 1998 (see above, para 19) identified 21 cases of disappearance where "evidence has revealed sufficient facts to justify further inquiries by the police with a view to pursuing legal action against offenders" In another 134 cases of disappearance the Board of Investigation found sufficient evidence of criminal acts but could not identify the alleged perpetrators It recommended further inquiries by the Service Commanders to identify the offenders According to information provided to the mission by the Secretary of Defence, the first indictments will be issued in a few weeks

37 In spite of these efforts to investigate cases of enforced disappearance and to bring the perpetrators to justice, family members of disappeared persons and representatives of non-governmental organizations complained that many of the persons who were identified as suspected perpetrators by the three Presidential Commissions of Inquiry continued to serve in their posts or have even been promoted A person quite often named in this respect is the former Deputy Inspector General of Police, Premadasa Udugampola

D Preventive measures (E/CN 4/1992/18/Add 1, para 204 (a))

38 The mission was informed that investigation officers of the Human Rights Commission regularly visit police stations and army detention camps They also conduct urgent inquires on information received through complaints about arrests and torture and provide necessary relief

39 Under section 28 of the Human Rights Commission of Sri Lanka Act No 21 of 21 August 1996, the Commission must be informed of every arrest and detention under the Prevention of Terrorism Act and the emergency regulations immediately and in any case not later than 48 hours from the time of such arrest or detention

40 In July 1997, the President of the Republic and Commander-in-Chief of the Armed Forces issued a series of directives to the heads of the armed forces and the police to enable the Human Rights Commission to exercise and perform its powers, functions and duties and for the purpose of ensuring that fundamental rights of persons arrested or detained are respected According to these directives, the members of the Human Rights Commission or any person authorized by it should be permitted to enter at any time any place of detention or police station

41. The directives also remind the heads of the armed forces and the police that every officer who makes an arrest or order of detention shall, in accordance with section 28 of Act No. 21 of 1996, inform the Human Rights Commission or any person specially authorized by the Commission of such arrest or detention not later than 48 hours from the time of such arrest or detention, as well as the place at which the person so arrested or detained is being held in custody or detention.

42. The person making the arrest or detention shall identify himself or herself to the person arrested or any relative or friend of such person, upon inquiry being made, by name and rank and shall issue to the relatives a document acknowledging the fact of arrest. The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained shall also be specified. Every person arrested or detained shall be informed of the reason for the arrest and shall also be afforded reasonable means of communicating with a relative or friend to enable his whereabouts to be made known to his family.

43. According to the directives issued in July 1997 by the President of the Republic, any child under 12 years or any woman arrested or detained should be placed in the custody of a Women's Unit of the armed forces or the police or in the custody of a woman military or police officer. A person of their choice should be allowed to accompany such child or woman to the place of questioning. A statement of a person arrested or detained should be recorded in the language of that person's choice who should thereafter be asked to sign the statement. If the person desires to make a statement in his or her own handwriting, he or she should be permitted to do so.

44. Members of the Human Rights Commission informed the mission that they have encountered no problems in visiting police stations or detention centres of the armed forces. The Commission was, however, unable to visit detainees held by the LTTE or reportedly held by the paramilitary forces such as the People's Liberation Organization of Tamil Eelam (PLOTE) and the Tamil Eelam Liberation Organization (TELO). Members of the Commission also provided information about reports of arrest and detention in accordance with section 28 of the Human Rights Commission Act. For example, 1,278 arrests had been reported to the Commission between 1 January and 30 July 1999, most of which (792) had been carried out in Vavuniya.

45. While the members of the Human Rights Commission were unable to indicate cases in which arrests were made without informing the Commission, representatives of non-governmental organizations claimed that section 28 of the Human Rights Commission Act was often ignored in practice. In their discussions with the Inspector General of Police and the commanders of the armed forces, the members of the mission got the impression that this important provision for the prevention of disappearances and other human rights violations relating to detention seems not to be very well known.

46. Another important preventive means is the direct human rights complaint to the Supreme Court in accordance with article 13 of the Constitution. The mission was, however, informed by the Chief Justice and others that this remedy cannot be pursued on behalf of persons who are missing or dead.

E Detention registers (E/CN 4/1992/18/Add 1, para 204 (d))

47 In spite of the recommendation contained in its 1991 visit report, the Working Group was informed that a central register of detainees had not been set up Technical problems were mentioned as the main cause, in particular by the Inspector General of Police

F Training course on human rights and humanitarian law for army and police personnel (E/CN 4/1992/18/Add 1, para 204 (i))

48 Members of the Human Rights Commission conducted educational programmes, seminars and workshops on human rights In January 1997, a Department of Humanitarian Law was set up at army headquarters The Working Group was informed that since its creation, a total of 231 training courses on international humanitarian law were given to 3,036 officers and 9,521 soldiers, with the assistance of the International Committee of the Red Cross (ICRC) International humanitarian law is currently a subject in promotion examinations for officers

49 Although Sri Lanka is not a party to Additional Protocols I and II of 1977 to the Geneva Conventions of 1949, the Commander of the Army ensured the mission that all international standards of humanitarian law applicable in non-international armed conflicts form part of the curriculum of army training courses

G Revision of the Prevention of Terrorism Act and Emergency Regulations (E/CN 4/1992/18/Add 1, paras 204 (e) and E/CN 4/1993/25/Add 1, para 146 (a))

50 The Working Group recommended that the Prevention of Terrorism Act and the Emergency Regulations currently in force be brought into line with accepted international standards regarding due process of law and treatment of prisoners The mission was informed that the Government had not made any amendment to the Prevention of Terrorism Act (PTA) and that the review of the Emergency Regulations had been limited to the reduction to 21 days of the maximum period of detention in areas outside the north and east of the country, and to 60 days in the north and east

51 Non-governmental organizations continue to claim that PTA and the Emergency Regulations, above all regulation 17, are the main reason for the continuation of arbitrary detentions and enforced disappearances They therefore call for the immediate abolition of these laws

H Compensation for the victims of enforced disappearances and their relatives

52 On the basis of the Registration of Deaths (Temporary Provisions) Acts No 2 of 1995 and No 58 of 1998 (see above), a total of 15,263 death certificates had been issued to relatives of missing persons as of 31 July 1999 Most of these death certificates relate to cases of disappearances which had occurred during the former Government The highest number of death certificates were issued in the districts of Matara (2,204), Kandy (1,913), Hambantota (1,565) and Kurunegala (1,415) Although the legal procedure for issuing death certificates was considerably simplified and no longer involves a court, such certificates can only be issued on

the initiative of the next-of-kin of a disappeared person The applicant is required to submit an affidavit along with the application setting out the grounds for his or her belief that the person in respect of whom a death certificate is sought has been missing for more than one year and that he or she truly believes such person to be dead If the disappeared person is included in the lists of any of the Presidential Commissions of Inquiry, the death certificate is even easier to obtain

53 Members of families of disappeared persons and representatives of non-governmental organizations claim, however, that this procedure is not applied equally in the different districts, and that some Divisional Secretaries are more inclined to issue death certificates than others It is alleged that this difference in practice has to do with the fact that the death certificate is a precondition for receiving compensation

54 The Rehabilitation of Persons, Properties and Industries Authority (REPPIA see above) is responsible for paying compensation to families of disappeared persons on the basis of a death certificate Its Chairperson informed the mission that relatives of a disappeared public civil servant receive 150,000 rupies (approximately US$ 2,400) whereas relatives of other missing persons only receive 50,000 rupies (roughly US$ 800) Representatives of non-governmental organizations regard this difference in treatment as discriminatory According to the Chairperson of REPPIA, until September 1999 a total of 410 million rupies were paid as compensation to 12,242 families of disappeared persons Problems were only encountered in the eastern provinces where it seems often to be difficult to find family members of disappeared persons or where the families are not cooperative Problems were also reported from the Colombo area where many of the disappeared persons were students or migrant workers whose families are difficult to trace

III CONCLUSIONS AND RECOMMENDATIONS

55 The Working Group appreciates the variety of measures which the present and previous Governments of Sri Lanka have taken, in compliance with the Group's earlier recommendations, for the purpose of clarifying cases of disappearances which occurred during the former Government, of providing justice to the families of disappeared persons, and of preventing future disappearances In particular, the Group wishes to stress the efforts undertaken, notwithstanding the ongoing severe conflict with LTTE in the north and east of the country, by the four Presidential Commissions of Inquiry into Involuntary Removal or Disappearance, by the Board of Investigation into Disappearances in Jaffna Peninsula established by the Secretary of Defence, by the former Human Rights Task Force and its successor, the Human Rights Commission of Sri Lanka established in pursuance of Parliamentary Act No 21 of 1996, by the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), the Attorney-General and other authorities

56 With respect to disappearances which occurred during the late 1980s and early 1990s, in particular the JVP-related cases of 1989 and 1990 in the south of the country, almost 40,000 complaints have been investigated and more than 20,000 cases of enforced disappearances have been established by the four Presidential Commissions of Inquiry On the basis of special temporary legislation, more than 15,000 death certificates have been issued and compensation has been paid to more than 12,000 families of disappeared persons In almost 4,000 cases, suspected perpetrators were identified, criminal proceedings were instituted against

some 500 members of the police and the armed forces, and some of the accused have been convicted and sentenced by the courts. Others have been subjected to disciplinary sanctions.

57. With respect to disappearances which occurred during the present Government, in particular the LTTE-related cases in 1996 in the Jaffna Peninsula, more than 2,600 complaints have been investigated by the Board of Investigation of the Ministry of Defence, more than 200 cases of disappearances were clarified and some exhumations were carried out. In addition, the Human Rights Commission investigated a considerable number of allegations of disappearances and traced many missing persons.

58. In the field of prevention, laws and regulations were enacted which enable the Human Rights Commission to visit police stations and detention centres of the armed forces and which require law enforcement officers to inform the Human Rights Commission within 48 hours of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, to issue receipts in acknowledgement of arrests and to respect other safeguards against arbitrary arrest and detention. In addition, training courses on human rights and humanitarian law were provided by the army and the Human Rights Commission.

59. The Working Group also welcomes the recent establishment of a special Unit in the Rehabilitation of Persons, Properties and Industries Authority (REPPIA) with the specific task of establishing a database on disappearances in response to the cases transmitted by the Working Group to the Government of Sri Lanka and with the explicit aim of clarifying these cases on the basis of presumption of death, the payment of compensation to the families and other means of establishing the fate and whereabouts of disappeared persons. This Unit has reported that it has clarified 4,010 of the roughly 12,000 cases submitted by the Working Group (2,761 of which on the basis of death certificates) but the Working Group has not yet been in a position to examine this information on a case-by-case basis.

60. Notwithstanding all these encouraging facts, the Working Group wishes to stress that Sri Lanka remains the country with the second largest number of non-clarified cases of disappearances on its list. Many of the missing persons allegedly traced by the authorities (in particular the Human Rights Commission) seem not to correspond to the disappeared persons submitted by the Working Group. Although a considerable number of criminal investigations have been initiated in relation to disappearances which occurred some 10 years ago, only very few of the suspected perpetrators have actually been convicted. Many families, therefore, rightly feel that justice has not yet been done to them.

61. Some non-governmental organizations also claim that the present Government has not done enough to investigate disappearances which occurred after it took office and to prevent disappearances in the future. Whereas disappearances under the former Government were investigated by four independent Presidential Commissions of Inquiry whose findings were in principle made available to the public, the more recent cases were only investigated by a non-independent and confidential Board within the Ministry of Defence. The Human Rights Commission, which in principle could play an important role in investigating and preventing disappearances, seems to lack the necessary authority, political and financial support to carry out this task in an efficient manner.

62. As far as prevention is concerned, a number of the earlier recommendations of the Working Group have not been implemented. First of all, the Prevention of Terrorism Act and the Emergency Regulations, which are rightly considered as the main reason for the continuation, albeit on a much less severe level, of enforced disappearances, have not been abolished or brought into line with internationally accepted standards of human rights. Secondly, no central register of detainees was set up. Thirdly, the safeguards for the prevention of arbitrary arrests, and in particular the legal obligation to immediately inform the Human Rights Commission of arrests and detentions, seem not to be widely known by the law enforcement bodies and are often disregarded in practice.

63. In conclusion, the Working Group addresses the following recommendations to the Government of Sri Lanka:

(a) The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators;

(b) The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the outcome of investigations by the police;

(c) The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance;

(d) The Prevention of Terrorism Act and the Emergency Regulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners;

(e) Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved;

(f) The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission;

(g) All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent on the

confirmation as "proven" by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children,

(h) The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families,

(i) The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead

Annex I

PROGRAMME

Monday, 25 October 1999

9 00 a m	Meeting with Mr P Witham, United Nations Resident Coordinator and UNDP Resident Representative
10 00 a m	Ministry of Foreign Affairs Mr L Fernando, Secretary of the Ministry Mr W Hettiarachchi, Director/United Nations Affairs Mr S Ekanayake, Assistant Director/United Nations Affairs
11 00 a m	Mr L Kadirgamar, Minister of Foreign Affairs
12 30 p m	Lunch hosted by the Secretary of the Ministry of Foreign Affairs

Tuesday, 26 October 1999

9 00 a m	Mr M H M Salman, Chairman, Rehabilitation of Persons, Properties and Industries Authority (REPPIA)
10 00 a m	Mr O S M Seneviratne, Chairperson, Human Rights Commission, and Mr T Suntheralingam, Commissioner
11 00 a m	Mr S N Silva, Chief Justice
12 noon	Mr K L Kamalasabayson, Attorney-General
2 00 p m	Mr U Gunaratne, President, Bar Association of Sri Lanka Mr S Deshapriya, MIRJE (Movement of Inter-Racial Justice and Equality) Mr F I Xavier, Home for Human Rights Mrs S Wickremasinghe, Secretary, Civil Rights Movement Mrs D Wickremasekera, Law and Society Trust Mr K Tiranagama, Lawyers for Human Rights and Development

Wednesday, 27 October 1999

9 00 a m	Presidential Commission of Inquiry Ms M Muttewugama, Chairperson Mr M C M Iqbal, Secretary Mr N Thuduwewatte Mr J S G Samaraginge
11 00 a m	Mr R K Chandrananda de Silva, Secretary, Ministry of Defence

12 noon	Mr. L. Koodituwakku, Inspector-General of Police
2.00 p.m.	Mr. M. Velautham, Forum for Human Dignity Dr. S. Jayaweera, Chairperson, the Centre for Women's Research (CENWOR) Mrs. S. Abeyesekera, INFORM Ms. I. Kois, International Centre for Ethnic Studies (ICES) Dr. Sritharan, University Teachers for Human Rights Mr. S. Pathirana, Organization of Parents and Family Members of the Disappearances (OPFMD)

Thursday, 28 October 1999

9.30 a.m.	The Commander of the Army, General Weerasuriya
10.30 a.m.	The Commander of the Air Force, Air Marshal Jayalath Weerakkody
11.30 a.m.	Ministry of Foreign Affairs Mr. W. Hettiarachchi, Director/United Nations Affairs Mr. S. Ekanayake, Assistant Director/United Nations Affairs
12.30 p.m.	The Minister of Justice, Constitutional Affairs, Ethnic Affairs and National Integration and Deputy Minister of Finance, Prof. G. L. Peiris
2.00 p.m.	Meeting with Mr. P. Witham/UNDP, Ms. J. Lim/UNCHR, Mr. C. Glennie/UNICEF, Mr. P. Vandenbruaene, Humanitarian Adviser to the United Nations Resident Coordinator and Mr. B. Schack/UNHCR
3.30 p.m.	Meeting with Ms. C. Burger, Deputy Head of Delegation and Mr. A. Mallet, Protection Coordinator, ICRC
4.00 p.m.	The Special Rapporteur on violence against women, Ms. R. Coomaraswamy
4.15 p.m.	Ms. D. Udagama, University of Colombo, alternate member of the United Nations Sub-Commission on the Promotion and Protection of Human Rights
4.30 p.m.	Press conference

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